

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NRS
2338.066
LCB FILE R-B1-14**

1. A Clear and concise explanation of the need for the adopted regulation.

The following information is provided pursuant to the requirements of NRS 233B.0603:

This regulation is needed because NRS 490.068 directs the NCOHV to adopt regulations setting forth: (1) who may apply for a grant of money from the Account for Off-Highway Vehicles; (2) procedures for awarding grants of money from the Account; (3) the manner in which applications for grants are to be submitted to the Commission; (4) that an applicant for such grant of money must provide information satisfactory to the Commission that the applicant has consulted with the requisite state, local, and federal governmental entities; and (5) the acceptable performance of work on a project for which a grant is awarded. This proposed regulation carries out the statutory directive by creating a system for awarding grants and monitoring grantees in accordance with the requirements of NRS 490.068 and 490.069.

Sections 2-14 of this regulation provide definitions that are applicable to the awarding of grants of money from the Account for Off-Highway Vehicles. **Sections 15-19** of this regulation set forth the provisions with which a person must comply to qualify to apply to the Commission for a grant of money from the Account. **Section 21-23** of this regulation specifies the information that must be included within, and must accompany, an application requesting a grant of money from the Account.

Section 20 of this regulation provides for the Commission to appoint a Grant Scoring Committee to score the grant applications that are submitted. **Section 20 and 25** of this regulation specify what must be contained in a request for grant applications that is issued by the Commission.

Section 25-34 of this regulation set forth the manner in which applications for grants of money from the Account will be requested, publicized, and evaluated and approved or rejected.

Section 35-41 of this regulation establish the manner in which the Commission will monitor and evaluate projects that are paid for, in whole or in part, by grant money that is distributed from the Account.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

How public comment was solicited:

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent by U.S. mail and email to persons who were known to have an interest in the subjects of Grant Regulations and the Grant Application Process

for the Nevada Commission on Off-Highway Vehicles (NCOHV) as well as any persons who had specifically requested such notice. Any person requesting this documentation

an agreement with the landowners. He stated concerns about having control over the land that could only be achieved by the Recreation and Purpose Act. He also stated BLM has worked with many different types of organizations as partners.

- d. Scott Gerz- Nevada Trail Stewards pointed out a lot of time and effort has been expended by the OHV community to make this work. He feels they are supportive of the Commission and are on the same page. Biggest concern is the arbitrary awarding grants. He shares the previous speaker's views on these things.

July 2, 2014 Commission on Off-Highway Vehicles Public Hearing on Draft Regulations

There were no written statements submitted at our July 2, 2014 meeting. The entire minutes and text of the meeting are included as Exhibit A for your reference. The Commission moved to forward these to the LCB for their review. This was done on July 11, 2014.

We had one Public Comment from Scott Gerz, representing the Nevada Trail Stewards. He strongly reiterated the OHV communities concern for a subjective award process. He felt that another subjective scoring process would place the Commission and the grant process at great risk. Enough cannot be said about a desire for a scored, open, and publically notified grant process.

Summary of written responses from August 7, 2014 Meeting

- a. William Kaepfner, President of the Ohio Motorized Trails Association advocated for a scored grant award process over a subjective grant scoring process. He points out these are public funds paid by the public OHV users and should be used for that purpose.
- b. Doug Holcomb, President of the Pine Nut Mountains Trail Association, submitted three statements advocated for a numerical scoring method and not subjective. He pointed out that the only priority for Commissioners should be working for the benefit of the Nevada OHV registration paying public and the State of Nevada. He advocated that grant applications should be made public for review and comment, that Commissioners should be able to lobby but not vote on funding awards, that grant applicants should be able to apply for more than one grant, that one grant project does not have to be finished before they can apply for another, and volunteer labor should be counted as an in-kind matching contribution. He advocated for pre-paying some grant expenses to make it easier on grant applicants.
- c. Larry Calkins, President of the Nevada Four Wheel Drive Association submitted two written statements (April 8 and May 11, 2014) advocating grant applications be on Commission website for 30 days for public comment, that minor changes on grant applications could be made by mutual consent, and that grant applicants be allowed to make a presentation to the Commission to answer questions.

- d. Karen Boeger, Board Member of the Nevada Chapter, Backcountry Hunters and Anglers submitted her statement from February 15, 2014 which was previously summarized.
- e. Paul Quade, an Attorney for Nevada Trail Stewards, outlined several concerns over the previous attempt by the Commission to award grant funds. He alleges that the Commission operated outside of its enabling legislation (NRS Chapter 490), violated the Open Meeting Law and the Administrative Procedures Act.

January 15, 2015, Public Hearing.

- a. Leo Drumm, our non-voting advisor from BLM, commented on the term "person" referring to who can apply for grants. Person is meant to be an individual or business that excludes government agencies. This was not the legislative intent and he showed minutes from the 2009 Senate Transportation Committee Hearing that supported that statement. He urged a Legislative fix to fix this concern. He also commented on certain types of costs that could be included in the grant application-specifically children programs, vehicle costs, supply costs. He also stated that cost for studies should be for OHV trails only, not shared trails. He also expressed concern for ornamental expenses and the need for a better definition. He was concerned that this may not benefit OHV recreation projects.
- b. There was no public comment from Las Vegas or Elko
- c. Larry Calkins, President of Nevada Four wheel Drive Association commented on the term "person" and that this could limit opportunities for Grant-funded Projects involving the BLM, USFS, State and local government entities to be done. He also expressed concern that this would hinder law enforcement activities. He encouraged a legislative change to fix this concern.
- d. Scott Gerz, President of the Nevada Trail Stewards, strongly advocated for grant scoring by NCOHV Commissioners needs to be non-subjective. He enumerated on the past failings of the Commission to try to develop a grant application process.
- e. Karen Boeger, from the Nevada Backcountry Hunters and Anglers asked a questions why a BDR is required to get the OHV Grant Program into law. DAG Palmer explained the proper process to her.

March 11, 2015. NCOHV Meeting

In our March 11, 2015 NCOHV Commission Meeting we had presentations by Sheila Lambert, Chief of the Nevada Office of Grant Procurement, Coordination and Management (NOGPM) and Raelene Palmer, our Commission Deputy Attorney General (DAG) representative on how we could coordinate the draft regulations with the state approved grant application process.

Ms. Lambert presented a process that should work for the Commission concerning the grant application guide and the proper process to analyze and award the grants. The NOGPM is providing administrative support while still allowing the Commissioners significant decision-making authority about grant guidelines and scoring the grants. Chief Lambert and DAG Palmer have proposed several changes to the draft regulations to correct what needs to be in regulation versus what needs to be in the grant application. As needs change, they can be addressed in the Grant Announcement rather than the LCB

process. They also added the statutory requirement on the non-voting advisor participation into the draft regulations.

Commissioners can change priorities and types of eligibility requirements in the grant application guide as needs change.

DAG Palmer outlined the changes to the draft regulations on recommendations made by Chief Lambert. They defined the Grants Office to provide an Administrative Role, not to make the Commission's decisions, but to help move the process along. The non-voting advisors are dealt with in Section 10 and 12. A definition of notice to proceed was added which is the proper notice of how grants work. There would be only one appeal process. On page 5 of the draft regulations outlines the process of issuing its request for grant applications. Section 21 makes references to that process beginning and what types of projects it is, as well as specific criteria that the grant scoring committee will use to evaluate and score the applications, along with what forms need to be used for a successful application. Applications will be submitted and must comply with certain provisions that are stated in the statute. Section 6 lists all the things which must be completed per statute. Page 7 includes the provision to complete the project no more than 2 years after the notice to proceed is issued. There is a provision that the Commission can modify this requirement. On Page 11, Section 25 applications for grants must be requested, publicized, evaluated, and approved in accordance to these additional sections.

Here is where the process begins. The Commission will issue a request for grant applications and then ensure certain things about the request that are fair. Then there will be a notice letting applicants know that the Commission will not score or take further action with respect to a grant application that is not complete by the deadline. This provision allows an early applicant who has an incomplete application to get a notice that their application is incomplete. As long as the application is complete by the deadline it would still be accepted. Applications will be sent to the NOGPM to be reviewed for completeness and legality. Then the applications will be forwarded to the Commission's non-voting advisors for independent review for completeness and compliance with the NRS. The non-voting advisors will return the applications within 15 days of receipt. The NOGPM will within 7 days, assign a number to the complete and compliant applications. The NOGPM will average the scores and put together the data that would be needed for a decision, ranking them from highest to lowest. Then provide a list from highest to lowest with the grant type due to the fact that only certain percentages can be given out for certain projects according to NRS. The Commission is not obligated to fund any of them.

The Commissioners (or a sub-group of Commissioners) will assign a score to the complete and compliant applications independently and return them to the NOGPM within 30 days. The NOGPM will average the scores and rank the applications from highest to lowest and by type of project (page 14, section 31). At a Properly Noticed Meeting the Commissioners can then decide whether or not to fund the Projects or how much funding they will approve for a project.

Page 15, section 32, the Commission will post on its website any grants that have been awarded no later than 5 business days after making those awards. Not later than 10 days after that posting is made an applicant who was otherwise eligible to receive a grant and the grant application was unsuccessful may submit a request for consideration. If

that happens, the Commission, within 10 days, will schedule a public meeting to hear the request for reconsideration and then no later than 30 days after that Public Meeting the Commission will issue a final decision on each request and post on the website the final decision.

After the grants are awarded the Commission will monitor, evaluate, and assist in the carrying out of the Grant process. The contract that will be entered to after the grant is awarded must be signed, then there will be a notice to proceed, this is the actual document that will start the timeline for completion. Page 18, section 41, is where the grantee will notify the Commission the Project is completed and what the Commission will do to ensure that Project was completed.

The Commission approved a motion to approve the draft regulations as presented with the change of the scoring committee time period from 15 days to 30. AG Palmer states that change is proposed Section 29 on Page 13. Seconded by Commissioner Lee.

Discussion ensues in regards to presentations. AG Palmer suggest for the Commission to authorize Chair McKay to work with legal counsel and the Office of Grants Management to make change to Section 31 but if Grants Office Management has a problem with change then the language is approved as is. Commissioner passes that motion.

Note- Draft Regulation changes were sent back to the LCB on March 12, 2015 for review

Public Comment from March 11, 2015 Meeting

There was no public comment for our March 11, 2015 meeting.

Public Comment from April 30, 2015 Meeting

The LCB returned our draft regulations on April 28, 2015. The draft regulations were posted on NCOHV website that day. Being as there was not much notice of the returned draft regulations Agenda item #8 was titled Status of draft regulations. Chairman McKay stated we will have to schedule a Public Hearing for our next meeting to discuss this. No member of the public or Commission made any comment on the draft regulations.

Public Comment from Public Hearing on June 5, 2015

There was no Public Comment on the Draft Regulation returned by the LCB on April 28, 2015. The Public Hearing was properly posted on May 12, 2015. The public was notified of the Notice of intent to Adopt Hearing on June 15, 2015.

Public Comment on the Notice of Intent to Adopt a Regulation Meeting June 15, 2015

There was no Public Comment on the Notice of Intent to Adopt the Regulation Hearing on June 15, 2015. The Notice of Intent to Adopt a Regulation was properly posted on May 12, 2015. The Commission Adopted the Draft Regulation.

Explanation of how interested persons may obtain a copy of summary

This summary will be posted on the NCOHV website under 2015 meetings under supporting documentation. It will also be filed with the Secretary of State, Nevada State Library, and the Legislative Counsel Bureau. Copies can also be obtained by contacting kmiller@nvohv.com or a written request can be made at NCOHV, 6015 So. Virginia St., Suite E, Box 163, Reno, NV 89502.

3. The number of persons who:

(a) Attended each hearing:	May 13, 2014-15	March 11, 2015-14
	July 2, 2014-15	April 30, 2015-8
	August 7, 2014-15	June 5, 2015-4
	January 15, 2015-12	June 15, 2015-4

(b) Testified at each meeting:	May 13, 2014- 4	March 11, 2015-0
	July 2, 2014-6	April 30, 2015-0
	August 7, 2014-8	June 5, 2015-0
	January 15, 2015-4	June 15, 2015-0

- 4. A list of names and contact information, including telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.**
- 5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how interested persons may obtain a copy of the summary.**

Comments were solicited from businesses in the same manner as they were solicited from the public. Comment was not directly solicited from small business because small businesses are not impacted by these regulations and thus not a burden or an economic impact to them.

- 6. If regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The draft regulations that were sent back to the LCB on March 22, 2015 were a compilations of changes that reflected public comment about the need for a numerical scoring and objective process that provided adequate opportunity for the public to comment on the grant applications that were submitted. Assistance by our Deputy Attorney General and the Nevada Office of Grants, Procurement, Coordination and Management revised the original draft regulations to reflect:

- a. Putting in the statutory role of the non-voting advisors that originally was not included.
- b. Put draft language that could be better addressed in the state approved grant application guidebook in the guidebook.

The Public after seeing these changes did not make any further suggestions to the draft regulations or the grant application guidebook.

7. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(a) Both adverse and beneficial effects; and

There will be no adverse effect on business because they will not be charged any fee or perform any additional mandated tasks. The regulations could have a beneficial effect on businesses related to OHV recreation by a program that improves that environment and their competitive position relative to out of state competition.

(b) Both immediate and long-term effects.

There will be no immediate adverse effect. There will be no long-term adverse effect. There will be a small beneficial effect on OHV businesses when this grant program begins to do improvements to the OHV environment in the state that will increase rider involvement. Long term benefits there will increase with an upswing in OHV registrations that in the long term will provide more funds to provide a better environment for OHV recreation.

8. The estimated cost to the agency for enforcement of the adopted regulations.

There is going to be no additional costs to the Agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulations overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulations overlaps or duplicates a federal regulation, the name of the federal agency.

There are no other state or government agency regulations that the proposed regulations duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The agency is not assessing a new fee or increasing an existing fee.